

POLICY NUMBER: 8108-93

SUBJECT: Family and Medical Leave Act Policy

CONTENT: Federal Regulations Regarding Family and Medical Leave Act

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DEPARTMENT OF HEALTH AND HOSPITALS  
FAMILY AND MEDICAL LEAVE POLICY

**I. POLICY:**

It is the policy of the Department of Health and Hospitals (DHH) to comply with all provisions of the Family and Medical Leave Act of 1993 as amended. In specific situations that are not covered by this policy, or that are in conflict with this policy, the provisions of the Family and Medical Leave Act ("FMLA") shall apply.

**II. PURPOSE:**

The purpose of this policy is to ensure the promulgation of rules governing the FMLA, to assign responsibility for aspects of the policy and to explain the process for adhering to the policy.

**III. APPLICABILITY:**

This policy shall be applicable to all eligible employees of DHH.

**IV. QUALIFYING LEAVE:**

For employee informational purposes, the FMLA generally provides:

**A. Family or Personal Medical Leave**

Up to 12 weeks of job-protected leave during a 12-month period will be provided to eligible employees under the provisions of the Family and Medical Leave Act of 1993 (FMLA) as amended for the following qualifying events:

1. The birth of a child and/or to care for the baby. \*
2. The acceptance of a child for adoption or foster care. \*
3. To care for the employee's spouse, child or parent with a serious health condition. \*
4. A serious health condition that makes the employee unable to perform the essential functions of his job.

\* See Section V. B. for limitations.

**B. Military Caregiver Leave**

Up to 26 weeks of job-protected leave during a single 12-month period will be provided to the spouse, son, daughter, parent or next-of-kin of a member of the armed forces, including the National Guard or Reserves per each qualifying event, to care for such member of the armed forces who is undergoing medical treatment, recuperation or therapy, who is in outpatient status otherwise, or who is on the temporary disability retired list for a serious injury or illness.

For purposes of Military Caregiver Leave, the single 12-month period is measured forward from the date the employee begins leave to care for the covered service member, even if the employer uses a different 12-month period for other types of FMLA leave.

Note: See the “Definitions” section for Family Relationships related to Military Caregiver Leave.

### **C. Military Exigency Leave**

Up to 12 weeks of job-protected leave during a 12-month period permits FMLA leave for any qualifying exigency, which is a non-medical need for leave due to 1) short-notice deployment, 2) military events and activities, 3) childcare and school activities, 4) financial and legal arrangements, 5) counseling, 6) rest and recuperation, 7) post-deployment activities, or 8) additional activities which arise out of active duty, provided that the employer and employee agree, including timing and duration of such leave.

For purposes of “exigency leave”, the term “active duty or a call to active duty status” means duty under a federal call to active duty in support of contingency operations pursuant to specific enumerated provisions of Section 688 of Title 10 of the United States Code. Such active duty or call is only made to members of the National Guard, Reserve components or certain retired members of the Regular Armed Forces or Reserve. Exigency leave therefore does not apply if the service member is a member of the Regular Armed Forces.

For purposes of Military Exigency Leave, the single 12-month period is measured forward from the date the employee begins leave, even if the employer uses a different 12-month period for other types of FMLA leave.

Note: See the “Definitions” section for Family Relationships related to Military Leave.

## **IV. DEFINITIONS:**

### **A. Eligible Employee - An employee who:**

1. Has been employed by the State for a total of at least 12-months (These need not have been consecutive. However, the break in service must not be for more than seven years unless the break was for certain military service) on the date on which any FMLA leave is to commence, **and**
2. Has worked **at least 1250 hours over the 12-month period preceding the**

**start of the leave.**

Note: In accordance with the Uniformed Services Employment and Reemployment Rights Act (USERRA), a returning member of the National Guard or Reserve is entitled to FMLA leave if the hours that he or she would have worked for the civilian employer during the period of military service would have met the FMLA eligibility threshold.

**B. Equivalent Position** - An employee returning from FMLA leave will have the same pay, benefits and working conditions, including privileges, perquisites and status. Intangible, immeasurable aspects of the job (i.e., the perceived loss of potential for future promotional opportunities) are not guaranteed. Equivalent positions involve the same or substantially similar duties and responsibilities, requiring substantially equivalent skill, effort, responsibility and authority. Equivalent positions will be at the same or a geographically proximate work site where the employee had previously been employed.

**C. Family Relationships -**

1. **Child** - A biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing *en loco parentis* (in the place of the parent), who is either under age 18, or age 18 or older and incapable of self-care because of a mental or physical disability.
2. **Parent** - A biological or adoptive parent, or a person who stood *en loco parentis* to an employee when the employee was a child. This term does not include an employee's mother-in-law or father-in-law.
3. **Spouse** - Husband or wife as defined in accordance with the law of the State in which the employee resides.
4. **Expanded Family Relationships for Military Leave** - Parents of a covered service-member, son or daughter of a covered service-member, next-of-kin of a covered service-member, and son or daughter who is on active duty or called to active duty status.

Next-of-Kin is defined as the nearest blood relative of the service member.

5. **Covered Service Member** - Current member of the Regular Armed Forces, National Guard or Reserve, including those on the temporary disability retired list, but does not include former members or members on the permanent disability retired list.

**D. Health Care Provider -**

1. A doctor of medicine or osteopathy who is authorized to practice medicine or surgery by the State in which the doctor practices;

2. Podiatrists, dentists, clinical psychologists, optometrists, and chiropractors (limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by X-ray to exist);
3. Nurse practitioners, nurse midwives and clinical social workers who are authorized to practice under state law and who are performing within the scope of their practice as defined under state law;
4. Christian Science practitioners with restrictions as outlined in the Federal Regulations;
5. Any health care provider from whom an employer or the employer's group health plan's benefits manager will accept certification of the existence of a serious health condition to substantiate a claim for benefits;
6. A health care provider listed above who practices in a country other than the United States, who is authorized to practice in accordance with the law of that country, and who is performing within the scope of his or her practice as defined under such law; or
7. Physician Assistants who are authorized to practice under state law and all medical para-professionals who are performing within the scope of their practice as defined under state law.

**E. Intermittent Leave** - Under certain conditions, FMLA leave may be utilized in small blocks of time (hours, days, weeks) that total the appropriate FMLA entitlement, rather than being used as periods consisting of consecutive weeks or days. Employees may use leave in the increments allowed by DHH's leave policies. If an employee qualifies for intermittent leave on an unpredictable basis, the employer must notify the employee upon request every thirty (30) days of the amount of leave time designated as FMLA leave during the preceding thirty days, provided the employee used leave during that period. For intermittent leave supervisors shall complete the DHH FMLA Intermittent Leave Form every thirty (30) days, review the form with the employee, obtain the employee's signature, sign the form and file the form in the employee's confidential supervisory file.

**F. Reduced Leave Schedule** - Leave schedule that reduces the usual number of hours per workweek or hours per workday.

**G. Serious Health Condition** - An illness, injury, impairment, or physical or mental condition that involves either an overnight stay in a medical care facility, or continuing treatment by a health care provider for a condition that either prevents the employee from performing the functions of the employee's job, or prevents the qualified family member from participating in school or other daily activities.

Continuing treatment by a health care provider, including any one or more of the following:

**1) Incapacity and treatment:** A period of incapacity of more than three (3)

consecutive, full calendar days and any subsequent treatment or period of incapacity relating to the same condition that also involves:

- (a) Treatment two (2) or more times within 30 days of the first day of incapacity, unless extenuating circumstances exist, by a health care provider. The first treatment must take place within seven (7) days of the first day of incapacity, or
- (b) Treatment by a health care provider on at least one (1) occasion which results in a regimen of continuing treatment under the supervision of the health care provider. The first (or only) in-person treatment must take place within seven (7) days of the first day of incapacity.

Note: A telephone consultation with a health care provider is not considered “treatment” under the FMLA.

**2) Pregnancy or prenatal care:** Any period of incapacity due to pregnancy or for prenatal care.

**3) Chronic conditions:** Any period of incapacity or treatment for such incapacity due to a chronic serious health condition. (Example: asthma)

A chronic serious health condition is one which:

- (a) Requires periodic visits (at least twice a year) for treatment by a health care provider;
- (b) Continues over an extended period of time; and
- (c) May cause episodic rather than continuing periods of incapacity.

**H. Treatment** - For purposes of the FMLA, treatment includes (but is not limited to) examinations to determine if a serious health condition exists and evaluations of the condition. Treatment does not include routine physical examinations, eye examinations, dental examinations or telephone consultations. A regimen of continuing treatment that includes the taking of over-the-counter medications such as aspirin, antihistamines, or salves; or bed-rest, drinking fluids, exercise, and other similar activities that can be initiated without a visit to a health care provider, is not, by itself, sufficient to constitute a regimen of continuing treatment for purposes of FMLA leave.

**I. Twelve-month Period -**

- 1. For purposes of regular family or personal FMLA, the 12-month period begins on the date the first quarter hour of FMLA leave is taken by the employee.
- 2. For purposes of Military Caregiver Leave and Military Exigency Leave, the 12-month period begins on the date the employee takes the first leave for Military Reasons. This 12-month period may be different from the 12-month

period used for regular FMLA.

3. For purposes of FMLA leave for the birth of a child or acceptance of a child for adoption or foster care, the 12-month period expires 12 months from the date of birth or placement.
4. For purposes of Military Caregiver Leave, an employee is limited to no more than 26 weeks of leave during each single 12-month period. This is the case even if the employee takes the leave to care for more than one covered service-member or to care for the same covered service-member who has incurred more than one serious injury or illness and if the single 12-month period involved overlap each other. If leave would qualify as both Military Care Giver Leave and regular FMLA leave, it must be classified as Military Care Giver Leave.
5. During any single 12-month period, an employee's total leave entitlement is limited to a combined total of 26 weeks for all qualifying reasons under FMLA and military leave. The 26 weeks Military Caregiver Leave is not in addition to the 12 weeks of FMLA leave to which eligible employees would be otherwise entitled.

**J. Subsequent FMLA Period** - Once the initial 12-month entitlement period has been exhausted, the employee does not begin a new entitlement period until the next FMLA qualifying leave usage, provided the employee is eligible.

**K. "Needed to Care For"** - FMLA is allowed for an employee needed to care for a family member, including providing physical and/or psychological care.

## **V. PROCEDURE:**

### **A. How Leave May Be Scheduled**

Leave may be taken in consecutive days or weeks or it may be taken intermittently or on a schedule that reduces the usual number of hours per workday or workweek when required. Employees on intermittent leave are required by FMLA regulations to make every effort to schedule medical treatments during their off-duty hours and to schedule leave so as not to unduly hamper agency operations.

Leave may be taken in the same increments as allowed in the DHH's leave policies.

### **B. Limitations Regarding Leave Schedules**

1. Intermittent or reduced leave schedules following the birth, adoption, or foster care of a child as part of a gradual return-to-work schedule will be allowed provided that the appointing authority determines that such intermittent leave does not interfere with the efficient operation of the organization. The

appointing authority may stipulate that leave for these purposes must be taken consecutively if that schedule will provide more business efficiency.

2. **When both spouses in a family are employed by the State of Louisiana**, they may take a combined total of 12 weeks if they are taking leave for the birth or adoption of a child or to care for a sick parent. This limitation does not apply to leave taken by one spouse to care for the other who is seriously ill, to care for a child with a serious health condition, or to care for the employee's own serious illness.
3. FMLA leave runs concurrent with other leave entitlements provided under Civil Service Rules and federal, state, and local laws.

**C. Usage of Accumulated Leave**

While absent for an FMLA eligible event and using FMLA leave, an employee is also required to use any available balance of **applicable paid leave** (that is, sick leave, annual leave, or compensatory leave). When all available paid leave is exhausted, the employee will be placed on leave without pay.

**D. Calculation of the FMLA Period for Part-time Employees**

For part-time employees, FMLA leave is calculated as a percentage of the time actually worked.

**E. Determination that an Absence is FMLA Eligible**

Per Federal Regulations, the employer has the responsibility to determine when an employee's absence is eligible for FMLA even if the employee does not specifically request FMLA leave. In DHH, the supervisor makes the determination with assistance from Human Resources when appropriate. The determination that an absence is FMLA eligible must be based only on information the employer solicits from the employee or the employee's spokesperson. The employee must respond to the employer's questions that are posed to determine if the absence is FMLA-qualifying. Failure to respond to such inquiries may result in denial of FMLA protection if the supervisor is unable to determine that the leave is qualifying. In any case, an employee who is absent for more than three consecutive working days for his own illness shall be tentatively placed on FMLA at the beginning of the fourth day of absence. The supervisor shall notify Human Resources immediately that the employee has been tentatively placed on FMLA.

**F. Confidentiality**

All FMLA information and paperwork is to be kept confidential and should be kept separate from an employee's personnel file. Only the employee may choose to share the information with co-workers.

**G. Notification to the Employee that His Absence is FMLA Eligible**



Once it is known that a qualifying condition might exist, the supervisor must notify the employee in writing that the absence will be considered FMLA qualifying and deducted from the employee's FMLA balance. Written notice of eligibility for FMLA leave should be provided to the employee within five (5) business days.

If an employee is not eligible for FMLA leave, the supervisor should provide the employee with written reasons for this determination within five (5) business days of the request.

Should the supervisor discover later that the absence is not FMLA eligible, the employee shall be so notified and the leave designated as FMLA will be restored to the employee's FMLA quota.

#### **H. Notice from Employee of Need for FMLA Leave**

1. **Any time** that an employee requests leave in any category for a purpose which is eligible under the FMLA (including military caregiver/exigency), he **shall** notify the immediate supervisor that the leave requested is FMLA leave. If the employee is uncertain as to whether or not the leave is eligible under the FMLA, the supervisor should be consulted. Any questions concerning eligibility should be directed to the Human Resources office. All forms and notices used must be those provided on the DHH Human Resources office website.
2. **Foreseeable Need** - The employee must provide **30 days advance** written notice to the immediate supervisor if possible, when the leave is foreseeable. If 30 days advance notice is not possible, the employee must notify the immediate supervisor as soon as the need for leave is known. The supervisor may inquire as to why the employee was unable to give a 30-day notice.
3. **Leave Not Foreseeable** - In cases where the employee cannot provide advance notice, the employee or the employee's spokesperson must give notice to the supervisor as soon as practicable, but within three workdays following the event.
4. **Military Exigency/Military Caregiver** - Employees must give 30-days advance notice for this type of FMLA leave, or must notify the immediate supervisor as soon as the need for leave is known. If the immediate supervisor is not available, the notice must be provided to the immediate supervisor's supervisor or section head. This notice must include anticipated time and duration of the leave needed.

#### **I. Completed *Certification of Health Care Provider* Form**

In all cases, the employee is required to provide the completed Certification of Health Care Provider form. The employee must provide the requested medical certification within 15 days after the request has been made.

A supervisor may require the employee to obtain a second opinion at DHH's expense. The appointing authority or designee is permitted to designate the health care provider to furnish the second opinion, but the selected health care provider cannot be employed on a regular basis by the state. If the second opinion differs from the first opinion, the appointing authority may require the employee to obtain certification from a third health care provider at DHH's expense. The third opinion shall be final and binding. The third health care provider must be agreed upon jointly by the appointing authority and the employee. If the appointing authority does not attempt in good faith to reach agreement on whom to select for the third opinion, the appointing authority will be bound by the first certification. If the employee does not attempt in good faith to reach agreement on whom to select for the third opinion, the employee will be bound by the second certification. **The supervisor may request subsequent re-certification of medical conditions no more often than every 30 days.** If the minimum duration specified on a medical certification by a health care provider is more than 30 days, the supervisor may not request re-certification until that minimum duration has passed unless the employee requests an extension of leave, circumstances described on the previous certifications have changed significantly, or the supervisor receives information that casts doubt upon the continuing validity of the certification. Any expense incurred in obtaining medical certification from a health care provider shall be the responsibility of the employee. If DHH requires a second or third opinion, the expense shall be incurred by DHH. If an employee fails to provide a requested medical certification in a timely manner to substantiate the need for FMLA due to a serious health condition, the supervisor shall consult with the appropriate Human Resource Director.

#### **J. Clarification of Medical Certification**

Note: This section does not apply to military leave provisions.

If the medical certification contains deficiencies or needs clarification, the employee must be given an opportunity to verify or clarify. Such clarification must involve the Human Resources office and must be in writing. The employee must be given a minimum of seven (7) days to fix any deficiencies or clarify his certification. Human Resources professionals may contact the health care provider directly to clarify information contained in the medical certification. The FMLA expressly prohibits the employee's immediate supervisor from directly contacting the health care provider under any circumstances.

#### **K. Benefits**

During any FMLA leave, DHH will maintain the employee's coverage under any group health plan on the same conditions as coverage would have been provided if the employee had been continuously employed during the entire leave period. The same health plan benefits provided to an employee prior to taking FMLA

leave must be maintained during the FMLA leave. If a new health plan, benefits, or changes in health benefits or plans are provided while an employee is on FMLA leave, the employee is entitled to the new or changed plan/benefits to the same extent as if the employee were not on leave. Notice of any opportunity to change plans or benefits must also be given to an employee on FMLA leave by the employee's supervisor. Except as required by COBRA, DHH's obligation to maintain health benefits during leave under FMLA ceases if and when the employment relationship would have terminated if the employee had not taken FMLA leave; an employee informs DHH of his or her intent not to return from leave; or the employee fails to return from leave or continues on leave after exhausting his or her FMLA leave entitlement in the 12-month period. Upon returning to work after being on FMLA/LWOP, the employee will begin repaying the employee's share of the health insurance and life insurance premiums that DHH continued to pay. The recoupment process will automatically begin with the next paycheck.

#### **L. Restoration after Leave**

1. Upon return from Family and Medical Leave, most employees will be restored to their original or an equivalent position. The use of Family and Medical Leave will not result in the loss of any employment benefit that accrued prior to the start of an employee's leave.

Employee returning from a medical FMLA leave may be required to present medical certification of fitness for duty.

2. Restoration may be denied under certain circumstances, including:

- a) If it can be shown that the employee would not otherwise have been employed at the time reinstatement is requested;
- b) The employee fails to provide a fitness for duty certificate to return to work, if required;
- c) The employee is no longer qualified for the position because of the employee's inability to attend a necessary course, renew a license, etc., as a result of the leave; however, the employee will be given a reasonable opportunity to fulfill such conditions upon return to work; or
- d) The employee is unable to perform the functions of the position because of a physical or mental condition, including the continuation of a serious health condition.

#### **VI. EXCEPTIONS:**

Requests for exceptions to this policy must be justified, documented and submitted in writing to the appointing authority for consideration.

#### **VII. QUESTIONS:**

Questions regarding this policy should be directed to staff of the Human Resources office.

#### **VIII. VIOLATIONS:**

It is unlawful and thus prohibited for any employer, administrator, manager, or supervisor to:

- a) Interfere with, restrain, or deny the exercise of any right provided under the FMLA; or
- b) Discriminate against an employee in any way for using his FMLA entitlement; or
- c) Discharge or discriminate against any person for opposing any practice made unlawful by the FMLA or for involvement in any proceeding under or relating to the FMLA.

Employees found to have violated this policy may be subject to disciplinary action and/or denial or delay of requested leave.

#### **IX. OTHER CONSIDERATIONS:**

Should any aspect of the Americans with Disabilities Act (ADA) be applicable, the DHH shall comply with this law.

#### **X. FORMS:**

Specific forms related to compliance with this policy can be found on the DHH Human Resources office's SharePoint site at

<http://dhhnet/employeecenter/Pages/HumanResources.aspx?PageView=Shared> under the link for "Forms".